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THE DOCTRINE OF CONTINUOUS VOYAGE.

LAW as it develops strives to deal with facts as they are and not with the mask with which they are disguised. According as it is more or less successful in so dealing with the realities instead of the pretenses, the administration of law avoids the reproach of artificiality and inefficiency.

The doctrine of "continuous voyage" is one of the most marked examples of this tendency as developed in public law. Certain trades were confined to the vessels belonging to a nation, as its coasting and its colonial trade. When a state of war made it impossible or inconvenient to carry on this trade in vessels of the belligerent nation, because they were subject to capture and condemnation, that belligerent opened such trade to neutrals and the neutral ships claimed immunity. This situation was met by the holding of the courts of Great Britain that such neutrals, so employed, were engaged in the commerce of the enemy, thereby acquired enemy's character and were accordingly subject to condemnation. To avoid this result these neutral ships adopted the device of visiting a neutral port between the two enemies' ports which were the real beginning and end of the voyage. They broke the voyage and claimed that it was not from one belligerent port to another, but from a belligerent port to a neutral and from that neutral port to the final belligerent destination. The ship was therefore always on a voyage between a belligerent and neutral port. This was met by the English holding that the voyage was continuous notwithstanding such stop, and was in fact, and there-

fore in law, a voyage from one hostile port to another; and condemnation was pronounced accordingly. Sir W. Scott held strongly that there could be no contraband goods bound for a neutral port,[1] but the question of an ulterior hostile destination seems not to have been there presented. Mr. De Hart[2] says that this question never arose in those earlier wars, and attributes this to the difficulties of land carriage in that age.[3]

Then the device was adopted of not merely calling at, but temporarily unloading and paying duties in, the neutral port and later reloading and continuing the voyage. The practice was so extensive that more than one third of the colonial produce imported into the United States seems to have been reëxported, making use of drawbacks for duties paid.[4] Lord Stowell had at first thought that this device was sufficient,[5] but the rule of the English courts was ultimately settled otherwise. In The William,[6] in an extended opinion by Sir William Grant, it was in 1806 finally decided, so far as English law is concerned, that a cargo shipped from a hostile port to a neutral port, then unloaded with payment of duties but shortly reloaded, and, as part of the original design, shipped to a hostile port, is in one continuous voyage throughout; and since both *termini* are hostile, the fact that it is in a neutral ship will not save it from condemnation. The importation into the neutral country was held a fictitious importation and a mere voluntary ceremony.[7]

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[1] The Immina, 3 C. Robinson, 167. [2] 17 Law Quarterly, 193.

[3] See The Maria, 5 C. Robinson, 365; Wheaton's International Law, 4 Eng. ed., sec. 508*a*, and many cases there cited.

[4] See a note in 5 C. Robinson, 365, quoting "a late popular publication in America under the signature Phocion," to the effect that the value of Colonial produce re-exported by means of drawbacks from America to Europe was by official reports in the last year $28,000,000, being more than one-third, namely, twenty-eight seventy-fifths, of the whole imports of the country.

[5] The Polly, 2 C. Robinson, 369. [6] 5 C. Robinson, 385.

[7] As to taking part in the coasting trade of the enemy, see The Welvaart, 1 C. Robinson, 122 (1799) (opinion by Sir W. Scott); The Johanna Tholen, 6 C. Robinson, 73; The Ebenezer, 6 C. Robinson, 250.

As to the Colonial trade, see The Immanuel, 2 C. Robinson, 186 (1799) (opinion by Sir W. Scott) ; The Maria, 5 C. Robinson, 365 (1805) (opinion by Sir W. Scott); The Phœnix, 3 C. Robinson, 186 (1800) (opinion by Sir W. Scott).

See 4 C. Robinson, appendix; The Juliana, 4 C. Robinson, 328; The Jonge Pieter, 4 C. Robinson, 79; The William, 5 C. Robinson, 385, and also table of cases, 3 Phillimore, 385.

The notes to 4 Eng. ed. of Wheaton, sec. 508*a*, maintain that "in Lord Stowell's

Except by treaties, the law of war is developed only in time of war or in adjudications arising from incidents of the struggle. After the great Napoleonic wars, as a result partly of exhaustion, partly of adjustments, there ensued a long period of comparative peace in Europe. No great war involving naval operations can be mentioned until the Crimean War. In that war control of the sea was so wholly with the allies that it cannot be called a naval war, but it affords one well-known case involving the doctrine of continuous voyage. That doctrine had not been favored by the continental countries of Europe, but had been much condemned. However, the Hanoverian ship, Frou Howina, with a cargo of saltpeter, bound for a neutral port but with an ultimate destination of the cargo for Russia, was brought in and the cargo condemned by the *Conseil Général des Prises* of France in 1855.[8] This seems the first extension of the rule to the transport of contraband of war, and the extension must be attributed to the courts of France.[9]

There seems no further extension of the scope of the continuous-voyage doctrine until the case of The Dolphin, during the War of the Rebellion.[10] This was the case of a steamer of apparently British ownership, captured between the Islands of Culebra and Porto Rico, March 25, 1863, and brought in by the U. S. S. Wachusetts. There were found on board nine hundred and twenty rifles and two thousand two hundred and forty cavalry swords, described as hardware, and consigned by Grazebrook of Liverpool to parties in Nassau. In the United States District Court for the Southern District of Florida it was shown that a secret letter from Grazebrook to the master was found on board which could only be

time and down to the American Civil War this doctrine had only been applied to cases covered by the above doctrine, often called 'the Rule of 1756,' or where an underhand trade was attempted to be carried on by subjects of one belligerent with the enemy." (See as to the Rule of 1756, 3 Phillimore, 371; and Kennedy, L. J., International Law Assoc. Rep. [1908] 41.) However, in the notes to sec. 501*e* to the same edition of Wheaton, a French case hereafter mentioned is considered and set out in a way, it seems, not wholly consistent with the above.

[8] See Westlake, International Law, Part II, 257; Calvo, Droit Intern., Tome 5, 52; Wheaton, International Law, sec. 501*c*, note *d*.

[9] See Mr. De Hart, 17 Law Quarterly Rev. 194–195, 199; Wheaton, International Law, 4 Eng. ed., sec. 501*c*, notes; 2 Westlake, International Law, 257; 2 Oppenheim, International Law, sec. 401. Messrs. Smith & Sibley (Intern. Law, Russo-Japanese War, 235, 241–242) contend that the doctrine of continuous voyage was extended to contraband in the case of The Eagle, Adm. 1803. See also the article by Mr. Lester H. Woolsey, Amer. Jour. Intern. L., Oct., 1910, p. 823.

[10] See 7 Moore, Dig. International Law, 700; 7 Fed. Cas. 868.

understood as intending that the cargo be transported to some Confederate port; and they were all blockaded. Marvin, J., held that Nassau furnished no market for such a cargo, that Grazebrook did not intend that her voyage should end at Nassau, and that all facts pointed with unerring certainty to Charleston or Wilmington as the ulterior destination of the vessel and cargo, and that the purpose was to violate the blockade. Both ship and cargo were condemned and there was no appeal.[11] It will be observed that an important part at least of the cargo was contraband and that the ultimate destination was a blockaded port, but the penalty was that appropriate for breach of blockade, namely, condemnation of both ship and cargo.

In the same month the same court decided the case of The Pearl, captured on a like voyage from Liverpool to Nassau. The cargo consisted of bales of cloth and ready-made clothing. There being no evidence to satisfy the court of a belligerent destination, restitution of vessel and cargo was decreed by the lower court, but this was reversed by the Supreme Court and the ship and cargo condemned, the latter court being satisfied that they were destined for one of the blockaded ports.[12] The penalty was that due to breach of blockade and no contraband goods appear involved. The lower court cited and relied on the English decisions for its conclusions. The Supreme Court cited no authorities and merely discussed the evidence.

In July of the same year Judge Betts of the United States District Court for the Southern District of New York decided the case of The Stephen Hart,[13] captured twenty-five miles from Key West with a cargo of ammunition and military clothing apparently bound for Cardenas, Cuba, where she was to be subject to the orders of one Helm, agent of the Confederate States in Cuba. There was direct evidence that the cargo was probably to be transhipped at Cardenas into a vessel more suitable for blockade running, unless the "Hart" were ordered to attempt the blockade herself, and that the goods were bought and designed for the enemy. Judge Betts held that the issue was

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[11] See The Dolphin, 7 Fed. Cas. 868.

[12] See The Pearl, 19 Fed. Cas. 54, 5 Wall. (U. S.) 574, and 7 Moore, Dig. International Law, 702.

[13] Blatchford, Prize Cases, 387.

"whether the adventure of the 'Stephen Hart' was the honest voyage of a neutral vessel from one neutral port to another neutral port, carrying neutral goods between those two ports only, or was a simulated voyage, the cargo being contraband of war and being really destined for the use of the enemy and to be introduced into the enemy's country by a breach of blockade by the 'Stephen Hart' or by transhipment from her to another vessel at Cardenas."

It was held that calling at a neutral port or transhipment therein made no difference if there were intent to transport contraband to the enemy, and that in transport of contraband if any part of the voyage be unlawful it is unlawful throughout. "The law seeks the truth," he says, "and never in any of its branches tolerates any such fiction as that under which it is sought to shield the vessel and her cargo in the present case."

Judge Betts quoted Sir Roundell Palmer, then Solicitor-General of England, as having stated in the House of Commons that the principles of the judgment in the case of The Dolphin "were to be found in every volume of Lord Stowell's decisions."

He also quotes a letter from the Foreign Office of Great Britain of April 3, 1863, to the owner of the "Peterhoff," after having communicated with the law officers of the Crown, to the effect that the United States had no right to seize a British vessel *bonâ fide* bound from a British port to another neutral port unless such vessel attempts to touch at, or has an intermediate or contingent destination to, some blockaded port or place, or is a carrier "of contraband of war destined for the enemy of the United States." There was a decree condemning both vessel and cargo and a like decree on the same day in the similar cases of The Springbok and The Peterhoff. The decree was affirmed by the Supreme Court in The Hart.[14] Judge Betts's opinion in the above case is always considered the strongest and best statement of the American doctrine.

The first case upon the topic to be decided by the Supreme Court of the United States was The Bermuda,[15] the case of an alleged British ship, captured seven miles from shore. There was slight evidence that her immediate destination was a blockaded port. She was about one hundred and sixty miles from Florida, in the hands of those engaged in blockade running and under instructions

[14] 3 Wall. (U. S.) 559.

[15] 3 Wall. (U. S.) 514 (1865).

from the English agent of the Confederacy, laden with military and government supplies, some marked with the initials of the Confederate Government, and accompanied by many letters and messages for Charleston. The ship and munitions of war were condemned below. The court agreed that neutral trade from one neutral port to another was entitled to protection if that which is conveyed is (in the words of Sir W. Scott) to become a part of the common stock of the neutral port; but that if the cargo is intended in reality to be sent by the same ship or another to a belligerent port, the rule is otherwise. The case of Jecker *v.* Montgomery [16] was cited, wherein in 1855 a shipment to a Mexican port while the United States was at war with Mexico was held to subject ship and cargo to condemnation for trading with the enemy, and that the interposition of a neutral port through which the property is to pass does not prevent it from being condemned. The court observed that at first Sir W. Scott [17] held that the landing and warehousing and the payment of the duties on importations was a sufficient test of termination of the original voyage, and that a subsequent exportation of the goods to a belligerent port was lawful; but in a later case, in an elaborate judgment, Sir William Grant [18] reviewed all the cases and established the rule, which has never been shaken, that even the landing of goods and payment of duties does not interrupt the continuity of the voyage of the cargo. "There seems no reason why this reasonable and settled doctrine should not be applied to each ship where several are engaged successively in one transaction, namely, the conveyance of a contraband cargo to a belligerent." It held, furthermore, that if the shipowner does not know of the ulterior hostile destination of the cargo the ship is not liable, otherwise if he knows. "Successive voyages connected by a common plan form a plural unit." Thus "a neutral ship conveying contraband to a belligerent port under circumstances of fraud and bad faith is subject to condemnation, and in this case the cargo all consigned to enemies and most of it contraband must share the fate of the ship." Also the court found that the original or ultimate destination was a blockaded port, and that the voyage from Liverpool to a blockaded port was one voyage.

[16] 18 How. (U. S.) 114.

[17] The Polly, 2 Robinson, 369, fully justifies this.

[18] The William, 5 C. Robinson, 385, *supra*.

Accordingly, by starting with such proposition in view, the liability to condemnation for attempted breach was fastened on the ship as firmly as if she had designed to carry it to the blockaded port herself, or to carry it as near as possible, and then to have it sent by a steamer of light draft or greater speed. The decree of condemnation of the vessel and of the whole cargo was affirmed.

In The Peterhoff[19] there was a decree below condemning the ship and her cargo of contraband bound for Matamoras, a Mexican port on the Mexican side of the Rio Grande River opposite the Confederate port of Brownsville. The cargo consisted in part of military supplies designed for the Confederate government. This decree of condemnation was reversed as to the ship and affirmed as to a part of the cargo. The mouth of the river was held not to be blockaded; and trade to Matamoras, even with intent to transport the goods thence to the enemy, otherwise than by sea, was not subject to forfeiture, but goods contraband of war and other goods of the same owner were condemned.

The English Court of Common Pleas in a case arising upon a policy of insurance on the cargo of the "Peterhoff" in 1864[20] reached the conclusion [I quote the syllabus]

"that goods that are contraband of war in the course of transport from a neutral port to a neutral port in a neutral ship are not, by the law of nations, liable to seizure by the cruiser of a belligerent state, even though the shipper may know or intend that they shall ultimately reach a port belonging to the enemies of the captors. To render goods contraband of war liable to seizure they must be taken *in delicto*, that is, in the actual prosecution of a voyage to an enemy's port."

The matter was not further contested. However, in Seymour *v.* London & P. M. Insurance Co.[21] the same court later held distinctly that the warranty as to other goods on the same ship had been broken when the intention was that the goods should go into the Confederate states in the course of the same transaction, and Mr. E. L. De Hart[22] very ably maintains that these English decisions in no way establish a doctrine adverse to that of continuous voyage in matter of contraband.

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[19] 5 Wall. (U. S.) 28.

[20] Hobbs *v.* Henning, 17 C. B. N. S. 791.

[21] 41 L. J. C. P. 193.

[22] 17 Law Quarterly, 193; 23 Law Quarterly, 197. See also 2 Westlake, International Law, 256.

In The Springbok [23] the decree was reversed as to the ship, affirmed as to the cargo, on the ground that there was the intent to run a blockade. The owner of the ship and the master appear not to have known the character of the goods. The cargo being intended merely for transhipment at Nassau, into some other vessel more likely to succeed in breaking blockade, the voyage from London to the blockaded port was held as to the cargo, both in law and in the intent of the parties, to be one voyage, and the liability to condemnation if captured during any part of that voyage attached to the cargo from the time of sailing.

This case is of interest as treating the cargo as guilty of breach of blockade, when intended for entry into a blockaded port, even though the ship, which formed one of the connecting links, was wholly innocent of the design and subject to no penalty. It fully applies the penalties of breach of blockade to a *guilty cargo* in an *innocent ship*, and is directly opposed to the perhaps general doctrine of writers (a doctrine which I submit is less known to courts) that the offense of breach of blockade "is essentially one of the ship and not an offense of the goods, except as derived from that of the ship." [24]

I venture to suggest, with deference, that the object of the rules as to breach of blockade is primarily to prevent cargoes entering or leaving the invested port, and that instead of the cargo being an incident and the ship the principal concern, it is exactly the opposite. The vehicle is forbidden merely to hinder her freight. Therefore the American rule may be justified, as in the above case. Now that aerial navigation is achieved, an added intricacy of connecting carriers may be expected, and any relaxation of the rule will still further endanger the efficiency of blockading operations. The law ought to penalize the thing carried quite as much as the carrier. I submit that the Japanese regulations during her late war are in accord with this view, as I shall presently seek to show.

In February, 1864, Earl Russell instructed Lord Lyons, the British Minister at Washington, as to The Springbok, that Her Majesty's Government "could not officially interfere," and as to that case "a careful perusal of the able judgment in the cases of

[23] 5 Wall. (U. S.) 1.

[24] See Westlake, International Law, Part II, War, 257.

the 'Stephen Hart' and 'The Gertrude,' in which the same parties were involved, goes so far to establish that the cargo of the 'Springbok' was never *bonâ fide* destined for Nassau, that the complicity of the owners of the ship with the design of the owners of the cargo is, to say the least, so probable, on the evidence, that there would be great difficulty in contending that the ship and cargo had not been rightly condemned."

Earl Russell's communication referred to the proofs that the cargo "containing considerable portion of contraband was never really *bonâ fide* destined for Nassau, but was either destined merely to call there or to be immediately transhipped after its arrival there without breaking bulk, and without any previous incorporation into the common stock of that Colony and then to proceed to its real destination, being a blockaded port."

On application to the Foreign Secretary, Lord Stanley, and on the joint opinion of Messrs. George Mellish, K. C., and W. Vernon Harcourt, K. C., that the sentence was erroneous, the matter was referred to the law officers of the Crown; and the Foreign Office, July 24, 1868, announced that Her Majesty's Government would not be justified on the materials before them in "making any claim" for compensation. Again, the inference is held warranted that the goods were intended for immediate transhipment and importation into a blockaded port.

In April, 1864, Earl Russell, on advice of the law officers of the Crown, declined to intervene on the part of Her Majesty's Government as to the decisions in the cases of The Peterhoff and The Dolphin, and was not prepared to say they are not in harmony with English prize cases, and he also held the case of The Pearl fair and equitable.[25]

Before the International Commission, under the Treaty of Washington, all claims on account of the cargo of the "Springbok" were unanimously disallowed, and all claims on account of the "Peterhoff," the "Dolphin," and the "Pearl" were in like manner disallowed.[26] No claim was made in case of the "Bermuda."

This "Springbok" decision has been attacked generally by the most respectable writers on international law, both English and Continental, and condemned by the Maritime Prize Commission,

[25] See 7 Moore, Dig. International Law, 723.

[26] 7 Moore, Dig. International Law, 725–726.

nominated by the institute of International Law,[27] and it has been argued that it lacked logical precision in indicating how far it involved a question of blockade.

Mr. Fish, Secretary of State of the United States, in 1871, stated that one hundred and sixty-seven cases had been condemned by the United States Prize Courts and that "with the exception of one case, that of the 'Springbok,' the Department of State is not aware of a disposition on the part of the British Government to dissent from any final adjudication of the Supreme Court of the United States in a prize case.[28]

The case of the Dutch ship 'Doelwyk,' captured by an Italian cruiser in the Red Sea in 1896 about ten miles from the French port of Djibouti, during the war between Italy and Abyssinia, is the next decision in point. The cargo was mainly arms and munitions of war. The immediate destination was a neutral port closely connected with belligerent territory. The Italian Prize Court condemned both ship and contraband cargo, but the conclusion of peace prevented the decree for condemnation from being carried out.[29]

As has been observed, "the second state of transportation from the neutral port to the enemy in the case of the 'Springbok' was from a neutral port to the enemy by water, and in the case of the 'Doelwyk' by land. Both cases sustain the doctrine of continuous voyage. Both decisions have received much criticism." [30]

A committee of the Institute of International Law, including many of the most eminent English and Continental scholars, in the same year, 1896, reported in favor of the rule as to continuous voyage applying to contraband, and this was confirmed by the vote of the Institute.[31]

The British Admiralty Manual of Naval Prize Law,[32] issued by authority of the Lords Commissioners of the Admiralty of Great

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[27] 7 Moore, Dig. International Law, 731.

[28] Gessner's Review of The Springbok, cited 7 Moore, Dig. International Law, 733.

[29] International Law Topics and Discussion, Naval War College (1905), 100–101; 2 Westlake, International Law, 28; 2 Oppenheim, International Law, 440; Smith and Sibley, International Law, Russo-Japanese War, 245.

[30] International Law Topics, Naval War College (1905), 100–101, *supra*.

[31] See Annuaire de l'Institut de Droit International, (1896), 231; Topics and Discussion, *supra* (1905), 103.

[32] Holland's ed. (1888) sec. 73.

Britain, provided that if the destination of the vessel be neutral "the goods on board should be considered neutral, notwithstanding it may appear otherwise that the goods themselves have an ulterior hostile destination to be attained by transhipment, overland conveyance, or otherwise."

In 1899, however, Great Britain, being at war with the South African Republic, an inland nation, and Lorenço Marquez, a Portuguese harbor, being the port through which supplies could be most easily got by the Republic, Great Britain maintained the right to visit, search, and seize neutral vessels, and did seize three German ships on suspicion of carrying contraband. In reply to the protest of the German government on the ground that there could be no contraband in goods bound to a neutral port under the general principles of international law, supported by the British Admiralty Manual as above, Lord Salisbury for the Government held that the provision of the Manual was not applicable, and quoted Bluntschli for the doctrine that if the ships or merchandise were bound for a neutral port, but to go beyond in aid of the enemy, confiscation would be justified. No contraband was found, however, on the three ships seized. Mr. Atlay believes the doctrine of Lord Salisbury will be apt to prevail in future.[33] Mr. Atlay in his notes to Wheaton[34] thinks that so far as contraband is concerned "the British Government is inclined to accept the principles followed by the courts of the United States," and he calls attention to the well-known fact that the British Government, at the time the decisions by the United States courts were complained of, "distinctly refused to make any diplomatic protest or enter objection against the decision of the United States Prize Court."

Notwithstanding the celebrated declaration of Sir Henry Maine, made in 1887, as to the greatly diminished importance of the blockade owing to improved transportation by land, and that South America would be "the only part of the world . . . at which blockades would be of value,"[35] they have since proved important operations in at least two other regions, — the coast of Cuba and the Pacific coast of the Russian possessions.

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[33] Atlay's note to Hall's International Law, 5 ed., 671, quoted in International Law Topics and Discussion (1905), 97.

[34] 4 Eng. ed. 687.

[35] International Law, 116.

The Japanese regulation of March, 1904, as to maritime capture provides:

"ART. 17. In the case of a ship, the destination of which is not the enemy's territory, whether she calls at that destination and discharges cargo or not, if there is reason to believe that the cargo in question is being conveyed to the enemy's territory, her voyage shall be regarded as a continuous voyage, and her destination shall be held to have been, from the commencement, the enemy's territory." [36]

This seems to commit Japan, whose naval operations in war are most recent, enlightened, and important, to the doctrine of continuous voyage, and the language is broad enough to apply to a cargo ultimately bound to an enemy's port, even when the ship was not so bound, and to call logically for condemnation of the cargo if contraband, and of cargo and ship if the ultimate destination of the cargo is a blockaded port; since in such case the language of the regulation makes the ship's destination from the beginning "the enemy territory" notwithstanding a "discharge" in a neutral port. The final destination of the cargo infects the ship. If such final enemy destination is a blockaded port, the voyage being regarded as continuous, forfeiture must follow. During the blockade or siege of Port Arthur, the most recent known, twenty-three vessels were captured attempting to break blockade.[37]

The writer has examined the adjudicated cases arising in the Prize Courts of Japan as reported in Professor Takahashi's valuable work on "International Law applied to the Russo-Japanese War," and has not found any decision in point.

In the discussion at the United States Naval College in 1905,[38] the conclusion was reached that the just regulation upon this question would be that "the actual destination of vessels or goods will determine their treatment on the sea outside of neutral jurisdiction."

As law advances it deals more and more with actualities and less and less with forms or pretended facts.

It seems as if every naval power, having command of the sea, had found itself constrained in practice to adopt, as far as convenient, the continuous-voyage doctrine even against its own official

[36] Naval War College, International Law Topics and Discussions (1905), 103; Takahashi, International Law applied to the Russo-Japanese War, 780.

[37] Smith and Sibley, International Law, Russo-Japanese War, 323.

[38] International Law Topics and Discussions, 106.

or academic declarations, whenever an actual case presented itself, and this in the face of almost universal criticism. There is then a vitality in the rule which intimates that it is stronger, at least, than academic opinion, and it does not seem discredited even in its extreme results by judicial decision or positive governmental action.

The International Naval Conference of London, 1909, agreed to articles which, if they become law, greatly modify the rule on the subject.[39] These articles provide:

"Article 7. Neutral vessels may not be captured for breach of blockade, except within the area of operations of the warship detailed to render the blockade effective."

This, however, is no petty space. The breach of blockade being now almost wholly a night operation, and the time of capture of vessels guilty of egress being apt to be the dawn succeeding, as "she emerged at daybreak from the zone of darkness" after sixteen hours of night and thirty knots speed, it is computed that the outer lines of the blockading force "might well be four hundred and eighty miles off."[40]

"Article 19. Whatever may be the ulterior destination of a vessel or her cargo, she cannot be captured for breach of blockade if, at the moment, she is on her way to a non-blockaded port.

"Article 20. A vessel which has broken blockade outwards or which has attempted to break blockade inwards, is liable to capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned or if the blockade is raised her capture cannot longer be effected."

As Admiral Stockton, Plenipotentiary Delegate of the United States to the Conference, states,[40] "article 19 exempts a vessel bound for a non-blockaded port from capture for breach of blockade no matter where she or her goods are ultimately bound. This article prevents the application of the doctrine of continuous voyage as to blockade and is a concession upon our part as we were the only power holding to the contrary."

By article 30, "absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy or to the armed forces of the enemy. It is immaterial whether the carriage

[39] See Supplement to Amer. Jour. Intern. L., July, 1909, p. 179 *et seq.*

[40] See the article by Admiral Stockton, 3 Amer. Jour. Intern. L., 604.

of the goods is direct or entails transhipment or a subsequent transport by land."

By article 33, "conditional contraband is liable to capture if shown to be destined for the use of the armed forces or of a government department of the enemy state."

By article 36, "notwithstanding article 35 as to destination, conditional contraband, if shown to have the destination referred to in article 33, is liable to capture in cases where the enemy country has no seaboard."

"Article 37. A vessel carrying goods liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerent throughout the whole of her voyage, even if she is to touch at a port of call before reaching the hostile destination."

The Declaration of London, as seems obvious under the federal Constitution, cannot modify the law of the United States unless it is ratified by the federal Senate. The writer has the written opinions of Admiral Stockton and Professor George G. Brown, the representatives of the United States, at the Conference to that effect, that of the Department of State of the United States and of Senator Henry Cabot Lodge, chairman of the Committee of the Senate on Foreign Relations. The Declaration was long since submitted to the Senate, but action has been delayed, as this writer was advised, at the request of the President on account of some matters of translation, and he was advised in June that it was still delayed at the request of the Department of State.

In 1899 the Supreme Court of the United States decided in The Adula,[41] a case arising from the blockade of the Cuban coast, that it would not modify its doctrine that a ship sailing to break blockade was liable to capture and condemnation as soon as she left the territorial water of her initial port, and that this view would be in no way changed on account of the opinions of foreign writers. From this it may be argued that the important consensus of foreign writers and learned authorities expressed by the International Conference against the doctrine of continuous voyage cannot be received to modify the rule of that court, and so of the nation whose chief tribunal it is, until Congress sees fit to make such modification by statute, or until the treaty-making power, namely, the

[41] 176 U. S. 361.

President and Senate, by proper negotiations and ratification alter the rule.

This writer applied to the United States Consul-General at London to learn whether the Declaration of London of February, 1909, had been ratified, and was advised in return under date of June 1, 1910, that there had been no ratification of the same.

It therefore, after the lapse of a year and a half, has failed to become the law of any nation.

My honored and learned friend, Professor Westlake, has very ably opposed the German doctrine that the laws of war are liable to be overridden by necessity,[42] answering the arguments of Lueder that the commanders will act on the dictates of necessity whatever may be laid down, and will not submit to defeat or ruin in order not to violate formal law. Dr. Westlake says, "This ground reduces law from a controlling to a registering agency." Admitting the force and dignity of this conception, yet in the grim struggle for existence between two nations, where human life is as nothing, a formal rule as to property which represents a fiction, a pretense, or a device will be apt to be disregarded. A blockade-running venture from a European port to the coast of the Southern Confederacy was full of dangers, but from Nassau to Charleston it was almost assured of success. Thus Mr. Thurlow Weed wrote Hon. John Bigelow, June 27, 1863, "A line of steamers from Nassau to Charleston has only lost thirteen out of one hundred and forty trips," less than ten per cent.

The blockade of the southern coast of the United States in the war of the Confederacy still stands as the great blockade of history, and the rules evolved by the United States courts at that time and administered with the official acquiescence of all other powers, and which were not discredited by the international commission acting on claims arising therefrom, cannot be said to be abolished even by the widest scholastic criticism. The Japanese regulations in the last blockade favor them, and they seem essential to the efficiency of blockade, and that is still one of the least bloody and most pacific, even though reducing operations of war, one of the least cruel and embittering forms of "belligerent coercion."[43]

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[42] International Law, Part II, War, 115.

[43] See remarks of the writer in an article in Amer. Jour. Intern. L., July, 1908, 474.